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State of New York Public Employment Relations Board Decisions from August 20, 1980

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 20, 1980

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-8/20/80

In the Matter of

SACKETS HARBOR CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

SACKETS HARBOR TEACHERS ASSOCIATION,
LOCAL 2740,

Charging Party.

BOARD DECISION

AND

ORDER

CASE NO. U-3704

WILLMOTT, WISNER, McALOON, SCANLON &
SAUNDERS (DANIEL SCANLON, JR., ESQ.,
of Counsel) for Respondent

BERNARD PERRY for Charging Party

This matter comes to us on the exceptions of Sackets Harbor Central School District (District) to a hearing officer's decision that it unilaterally altered a term and condition of employment of its teachers who are in a unit represented by Sackets Harbor Teachers Association, Local 2740 (Local 2740). The District excepted to the hearing officer's order that it rescind the policy

Until the 1978/79 school year, extracurricular activities were supervised by teachers who volunteered for them or, if there were not enough volunteers, by other people in the community. In February 1978, the Board of Education of the District passed a resolution which, for the first time, required teachers to perform

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extracurricular activities.¹ The new policy took effect in September 1978; and on November 24, 1978, Local 2740 filed the charge herein.² It is this new policy that the hearing officer found to constitute unlawful unilateral action.³

1 The resolution reads:

"Extracurricular clubs and activities, be they academic or athletic in nature, are an integral part of the total education offering of this district. It is paramount that the welfare of students' instructional program be given the highest priority.

The District Principal is hereby charged with implementing this policy as soon as is practical. The discretionary power regarding the position appointments resides entirely in the hands of the Chief School Officer.

Each member of the instruction and certificated ancillary staff will be obligated to fulfill at least one extracurricular position annually as part of their total educational commitment to the students of the Sackets Harbor Central School District. In the case of physical education teachers, each will be required to coach two established and distinct sports per year. Such assignments shall, with the exception of those assignments and/or positions that have traditionally been unpaid, be remunerated at a salary rate to be determined through open negotiations with the Teachers Association."

2 The District agreed to negotiate the matter in October 1978, but it would not rescind its action during the interim. The negotiations led to a tentative agreement that was approved by the District's Board of Education but rejected by the membership of Local 2740.

3 The charge does not present any issue concerning the compensation of employees assigned to supervise extracurricular activities.

The District raised five affirmative defenses to the charge. The hearing officer rejected each of them and concluded that the District was in violation of §209-a.1(d) of the Taylor Law. The District excepted to the hearing officer's conclusion. Its exceptions are directed to the rejection of only one of its affirmative defenses, which alleges that the assignment of extra-curricular activities to teachers is a management prerogative.

The hearing officer agreed with the District that it is a management prerogative to assign tasks to an employee if the tasks are an inherent part of the employee's occupation. He also agreed with the District that the supervision of extracurricular activities is inherent in the occupation of a teacher. On the other hand, the hearing officer ruled that an employer may not unilaterally increase the hours of work of its employees. He concluded that the District's assignment of extracurricular activities to its teachers was a mandatory subject of negotiation because the assignments in question were in addition to the normal classroom duties of the teachers and thus increased the teachers' workday. He proposed an order requiring the District to rescind its policy requiring unit employees to perform extracurricular activities and to relieve unit employees of such assignments.

In support of its exceptions, the District relies upon Orange County Community College, 10 PERB ¶3080 (1977). In that case, we held a demand that teaching hours be scheduled only for

weekdays to be ~~non~~mandatory because, if granted, it would preclude the employer from offering classes on Saturdays and Sundays and thus restrict the educational program the employer could offer. The District also relies upon Cohoes, 12 PERB ¶3113 (1979), in which we held that a school district, having properly decided to ~~add regular instructional time for students, was under a compelling~~ need to provide teacher supervision. Therefore, although this was a mandatory subject of negotiation, we found that under the circumstances there present it could require teachers to work during the added instructional time before reaching agreement.


These decisions are not applicable to the instant circumstances. Orange County is not applicable because it dealt with a non-mandatory subject of negotiation. The Cohoes decision is also inapplicable. In that case, we ruled that an employer could unilaterally change a term and condition of employment "where: (1) there are compelling reasons for the employer to act unilaterally at the time it does so; and (2) it had negotiated the change in good faith by negotiating with the employee organization to the point of impasse before making the change and by continuing thereafter to negotiate the issue." On the record before us, we cannot conclude that the District was under a compelling need to alter the manner by which it arranged for the supervision of extracurricular activities. There is no evidence that it could not have continued to provide that service just as it had done in the past. Moreover, the District unilaterally increased the hours of the teachers without having even attempted first to negotiate the change. Accordingly, we affirm the decision of the

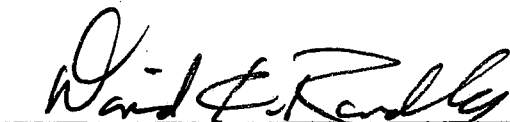
hearing officer that the assignment of extracurricular activities to teachers in fact lengthened their workday and was, therefore, a term and condition of employment.

NOW, THEREFORE, WE ORDER the District to rescind forthwith its policy of requiring members of Local 2740's negotiating unit to perform extracurricular assignments; to relieve unit members of such assignments; and to cease and desist from taking unilateral action as to this or any other term and condition of employment without prior appropriate negotiation with the duly chosen bargaining representative of its employees.

Dated, Albany, New York
August 19, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-8/20/80

In the Matter of

ADDISON CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

ADDISON TEACHERS ASSOCIATION,

Charging Party.

BOARD DECISION AND ORDER

CASE NOS. U-3424
U-3566
U-3600
U-3783
U-3987
U-4112
U-4187
U-4188

THEALAN ASSOCIATES, INC., for Respondent

JOHN B. SCHAMEL, JR., for
Charging Party

This matter involves eight separate charges by the Addison Teachers Association (Association) against the Addison Central School District (District). The first four were consolidated by the hearing officer and considered in a single decision dated November 20, 1979. The fifth was considered by the hearing officer in a decision dated December 7, 1979, and the last three were consolidated by him and considered in a decision dated February 19, 1980. In his decisions, the hearing officer dismissed some charges and found merit in others. The District has filed an exception to one of the determinations sustaining the charge. The Association has filed exceptions to several of the determinations of the hearing officer dismissing its charges. As some of the circumstances underlying the charges and exceptions are common to all three of the hearing officer's decisions, we consolidate all cases for purposes of decision.

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Association Charges Dismissed

Improper Motivation

A number of exceptions object to the hearing officer's failure to find the requisite improper motivation for the District's conduct.

Several of the charges alleged that the District discriminated against or coerced certain named Association members in various ways.¹ The hearing officer dismissed each of the charges. He did so because he credited explanations of the District that it had business reasons for each of its actions and because he found no basis for a conclusion that any of these actions was taken for the purpose of depriving employees of organizational or representational rights. He also found that the District did not discriminate against or coerce the unit employees in violation of the Taylor Law when it assigned them extracurricular activities because, he concluded, there was no evidence that the assignment was made for the purpose of depriving the employees of such rights.

In its exceptions, the Association argues that circumstantial evidence, when viewed in light of the District's allegedly manifest hostility to the Association, compels a conclusion that the District was improperly motivated as to each of the actions complained about.

1 It is alleged that:

1. The children of Frank Roth were given poor schedules in retaliation for his activities on behalf of the Association.
2. Mary Doud was first harassed when she sought to change maternity absence to sick leave and was later discharged because of her support of the Association.
3. Michelle Gordon, the Association's president, was harassed when she sought leave to attend a PERB hearing and was later improperly denied leave without pay.

While relations between the District and the Association have been marked by an atmosphere of hostility and antagonism, we do not consider that circumstance alone as a sufficient basis for an inference that the District was motivated by illegal considerations in taking the actions in question. Accordingly, on the record before us, we accept the hearing officer's determination.

Sufficiency of Factual Evidence

A number of exceptions allege that the hearing officer erred in determining the facts.

With respect to the assignment of extracurricular activities, the hearing officer also found that the District had not made a unilateral change in preexisting practice and, therefore, had not violated its duty to negotiate.² The record supports his findings. As stated by the hearing officer, the record indicates that "for several years involuntary extracurricular activities had been assigned to teachers who objected to extra duty."

Another of the Association's charges of unilateral change relates to the last day of work for teachers. In the past, the last day of the regents examinations had been on a Wednesday and the last day on which the teachers worked was the following day, a Thursday. In 1979, the final regents examination was given on a Thursday and the teachers were not dismissed until the following day, Friday. The Association charges that the release of teachers

² In Sackets Harbor, 13 PERB ¶_____, issued today, we determined that the assignment of extracurricular activities to teachers is a mandatory subject of negotiation if such assignment extends the working hours of the teachers.

on Friday, rather than Thursday, constitutes a unilateral change. The hearing officer determined that the teachers had always been required to work one day after the last regents examination, whatever day of the week that may have been. Thus he found that the District did not change any term or condition of employment. We affirm the findings of fact and conclusion of the hearing officer.

One of the charges is that the District refused to negotiate with the Association as to the terms and conditions of employment of part-time teachers. The hearing officer found that part-time teachers were not in the negotiating unit for which the Association has been recognized; accordingly, he dismissed the charge. He based his factual conclusion upon both the contract language defining the negotiating unit and the past history of negotiations showing that the Association had not negotiated for part-time teachers. We conclude that the record supports the hearing officer's determination.³

In the remaining charge, the Association asserts that a secretary of the elementary school principal eavesdropped on teachers engaged in Association activities. The hearing officer determined that this charge was not supported by the evidence. In its exceptions, the Association argues that the hearing officer misread the evidence because he erroneously credited testimony of some of the District's witnesses. We find no reason to disturb

³ Alternatively, the Association argues that part-time teachers properly belong in the negotiating unit, and it proposes that they now be placed there by this Board. Such a proposal may not be made in the course of an improper practice charge. It may only be made in a representation proceeding, at the appropriate time. So. Cayuga CSD, 9 PERB ¶3056 (1976), aff'd.
So. Cayuga Teachers Assn. v. PERB 59 AD 2d 1032 (4th Dept. 1977)

the hearing officer's resolution of credibility.

Adequacy of Basis in Law

The Association has challenged conclusions of the hearing officer as lacking an adequate basis in law.

One of the charges alleges that the District unlawfully discriminated against a unit member, John Heffner, by stating that in deciding whether to promote him to Department Chairman, it would take into consideration his refusal to accept assignment to an extracurricular activity. The hearing officer ruled that the District could properly take such a refusal into consideration because it is entitled to determine criteria for promotion, and that willingness to accept extra assignments could properly be such a criterion. We agree, and affirm his ruling.

Another challenge concerns the District's obligation to furnish certain information. The District denied the Association's request for information that it claimed it needed to ascertain whether the District had complied with an arbitration award. The District told the Association that it could obtain the information through its own efforts under the Freedom of Information Law. The hearing officer determined that where an employer has an obligation under the Taylor Law to provide information to a union, it violates the Taylor Law if it limits the union to its rights under the Freedom of Information Law. In the instant case, however, the hearing officer ruled that failure to comply with a grievance arbitration award would not, in and of itself, be an improper

practice. Therefore, there was no Taylor Law duty to provide information concerning compliance with such an award and, hence, no improper practice in refusing to do so here. We agree with his conclusions and we affirm this ruling of the hearing officer.⁴

The last of this category of exceptions concerns the proper conduct of negotiations. The District introduced a remedial program in mathematics and reading. This occasioned a change in some of the daily schedules of classes. On June 13, 1979, the Association demanded that the matter of schedules be negotiated and it proposed specific dates for meetings on the proposal. Without conceding the mandatory nature of the subject, the District indicated that it would meet with the Association and discuss the matter on one of the dates, which was the next scheduled day for negotiations on the basic agreement between the parties. Without reaching the question whether the demand constituted a mandatory subject of negotiation, the hearing officer ruled that there was, in any event, no violation of the duty to bargain because the District's offer to meet with the Association on the specified date was an appropriate response to the demand. We agree with the hearing officer's conclusions on this record and we affirm his ruling.

There remains for consideration the Association's exception to the failure of the hearing officer to make any finding as to the Association's charge of unlawful unilateral action as to

⁴ With regard to the proper recourse for enforcement of an arbitration award, see Hunter v. Proser, 274 App. Div. 311 (1st Dept., 1948), aff'd 298 NY 828 (1949).

access by Association representatives to teachers during their preparation time. Classes at the elementary school were completed by 3:00 p.m., but the teachers' workday continued until 3:30 p.m. The interim period was deemed to be teacher preparation time. For the preceding five years, the Association representative had been permitted with knowledge of the District to meet with teachers at the elementary school during this period. After November 13, 1978, this practice was terminated by the District when it informed the Association representative that he could no longer meet with the teachers in that period.

While the hearing officer noted these facts, he made no conclusions of law as to them. We determine that the prohibition against the use of teacher preparation time by Association representatives constituted a unilateral change in a term and condition of employment and thus violated §209-a.1(d) of the Taylor Law.

The District's Exceptions

The hearing officer determined that the District unilaterally reduced the lunch period of kindergarten teachers from 35 minutes to 25 minutes and thus violated §209-a.1(d) of the Taylor Law. In its exceptions, the District argues that there was no change in the working time of teachers, but only in the location where the work was performed. It asserts that before the change the teachers worked the extra ten minutes supervising students in the lunch room, while thereafter they worked the extra ten minutes supervising students in the classroom.

The District makes another argument, apparently with respect to a possible contrary finding and remedy. It asserts that, by reason of a subsequent determination of the Commissioner of Education that the free lunch time of kindergarten teachers was increased from 25 to 30 minutes, it altered its transportation schedule. By reason of the transportation schedule, the District states, the restoration of a 35-minute lunch period for kindergarten teachers would impose a hardship upon the District.

Contrary to the District's explanation, the record supports the determination of the hearing officer that the District, in fact, reduced the free time of kindergarten teachers. Accordingly, we adopt his recommendation that the District restore the 35-minute lunch period. It would do violence to the policies of the Taylor Law if the District were permitted to escape responsibility for its wrongful conduct because of possible administrative problems that result from that conduct.⁵

The Remedy

Our order, as hereinafter stated, is, as it must be, directed to those improper practices we have found.

We note the atmosphere of hostility and distrust in which the parties have conducted their labor relations. Yet we can do no more to effectuate the policies of the Taylor Law than resolve on a case-by-case basis those disputes brought to us over which we have jurisdiction. Beyond that, we cannot bring about the harmonious and cooperative relationships between governments and their employees sought

⁵ It can, of course, seek to relieve the problem through negotiations with the Association.

to be achieved by the declared statutory policy. That goal can only be achieved by the parties themselves, and only if they approach each other in a spirit of cooperation and willingness to understand their legitimate mutual and separate concerns.


NOW, THEREFORE, WE ORDER the District to:


- (1) Rescind the reduction of the kindergarten teachers' lunch period;
- (2) Recompense the kindergarten teachers at their pro-rated salary rate for the daily ten-minute diminution of their lunch period, plus 3% interest; and
- (3) Cease and desist from denying Association officials access to teachers in the elementary school between 3:00 and 3:30 p.m.

All other charges herein considered are hereby dismissed.

Dated, Albany, New York
August 20, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF WHITE PLAINS,

Respondent,

-and-

PROFESSIONAL FIRE FIGHTERS ASSOCIATION
OF THE CITY OF WHITE PLAINS, NEW YORK,
INC., Local 274, I.A.F.F.,

Charging Party.

#2C-8/20/80

BOARD DECISION AND ORDER

CASE NO. U-3331

RAINS & POGREBIN (PAUL J. SCHREIBER, ESQ.,
of Counsel), for Respondent

BELSON, CONNOLLY & BELSON (NICHOLAS R.
SANTANGELO, ESQ., of Counsel) for Charging
Party

The charge herein was filed by the Professional Fire
Fighters Association of the City of White Plains, New York, Inc.,
Local 274, I.A.F.F. (Association) on May 28, 1978. It alleges
that the City of White Plains (City) violated its duty to bargain
in good faith by ordering, on and after May 3, 1978, unit
employees to complete "Outside Job Reports", that is, to report
outside employment. The City asserted several affirmative defen-
ses, one of which was that the Association, when notified of the
City's intention to require the reports, failed to request nego-
tiations as to the matter. The hearing officer agreed with this
position of the City and dismissed the charge.¹ The Association

¹ The hearing officer rejected the other affirmative defenses of
the City, and it has filed exceptions to that part of the deci-
sion. As we affirm the determination of the hearing officer
dismissing the charge that the City violated its duty to nego-
tiate as to the matter because the Association never sought
such negotiations, we do not reach the City's exceptions.

has filed exceptions to this determination.

FACTS

Since 1965, §130.3 of the fire department's rules and regulations provided that firefighters could not "engage in another business or employment, except with the knowledge and consent of the Chief". To obtain such consent, a firefighter was required to submit an Outside Job Report. However, since 1970, the rule had neither been observed by the firefighters nor enforced by the City. After the 1974 contract negotiations, when the Association threatened a lawsuit if the reports were required, the City discontinued their use.

In early 1977, the City informed the Association of its intention to amend its rules and regulations, including §130.3. One meeting was held subsequent to the City's announcement. At that meeting, the Association's president objected to the changes in general. He also objected particularly to the change in and reactivation of §130.3 on the ground that the Outside Job Report procedure violated the firefighters' right of privacy. No further discussions were held regarding any of the proposed revisions until after they were adopted by the City on July 1, 1977. Several meetings were held in November prior to the distribution of the revised rules to the firefighters. While some changes resulted, the filing of the Outside Job Report was still required.

Negotiations for a successor agreement began in December 1977, and were completed on January 8, 1978. At no time during these negotiations was the general subject of the §130.3 revision or its specific requirement of Outside Job Reports raised by the Association. On May 3, 1978, the Outside Job Report forms were dis-

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tributed to the firefighters.

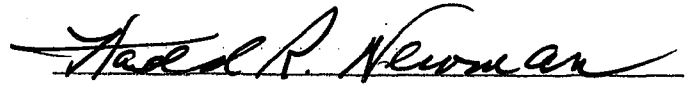
The hearing officer found that a requirement that firefighters fill out the Outside Job Report forms is a mandatory subject of negotiation but that the Association's objection to this requirement was only that the information sought from the firefighters by the City violated their constitutional right to privacy. This objection, he concluded, does not raise any Taylor Law issue because it is not directed to the completion of the forms by the firefighters, which he held to be a mandatory subject of negotiation. He also found that the Association was given clear and explicit notice that the City was reinstating the requirement of the Outside Job Reports and it did not address that matter during the negotiations that were held in December 1977. and January 1978. Because the Association made no objection on Taylor Law grounds nor raised the subject in pending negotiations, the hearing officer ruled that the Association must be deemed to have waived its right to negotiate as to the City's action requiring firefighters to complete the Outside Job Report forms.

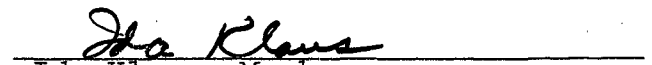
This matter comes to us on the exceptions of the Association.


In considering this matter, we need not rule on whether the requirement that firefighters fill out the Outside Job Report forms is a mandatory subject of negotiation. For the reasons stated by the hearing officer, we find that the Association acquiesced in the action of the City.

NOW, THEREFORE, WE ORDER that the charge herein be, and it
hereby is, dismissed.

DATED: Albany, New York
August 20, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2D-8/20/80
STATE OF NEW YORK (GRIEVANCE APPEALS BOARD),	:	BOARD DECISION AND ORDER
Respondent,	:	
-and-	:	
PAUL J. BARONCELLI,	:	Case No. U-3954
Charging Party.	:	

JOSEPH R. BRESS, ESQ. (FLORENCE T. FRAZIER, ESQ. and CAROL M. HOFFMAN, ESQ., of Counsel) for Respondent

PAUL J. BARONCELLI, ESQ., Pro se

This matter comes to us on the exceptions of Paul J. Baroncelli to a hearing officer's decision dismissing his charge against the State of New York. The charge alleges that the State, through the action of the New York State Grievance Appeals Board (GAB), violated §209-a.1(a), (b) and (c) of the Taylor Law in that GAB improperly impugned Baroncelli's motive in invoking the grievance procedure established pursuant to the Governor's Executive Order 42.

Over a period of approximately two years, Baroncelli filed eight separate and distinct non-contract grievances against the New York State Tax Department pursuant to Executive Order 42. The grievances alleged numerous acts of retaliation, harassment

and supervisory misconduct against him by two of his supervisors. On June 29, 1978 and September 19, 1978, the grievances were heard by GAB. Thereafter, on December 8, 1978, GAB issued its decision in which the eight grievances were denied. The decision includes this language:

"Moreover, it is apparent that the grievant has utilized this procedure to promote his own discontent with the personalities and positions of his superiors. This Board will not permit this procedure to be abused in this manner."

Baroncelli, who was the CSEA shop steward at the White Plains office of the Department of Taxation, asserts in his charge before us that this language was intended to intimidate him and to discourage him from filing non-contract grievances on behalf of his fellow employees.

The hearing officer dismissed the charge, ruling that the language of GAB's decision did not violate §209-a.1(a), (b) or (c).¹ Section 209-a.1(c) prohibits discrimination against an employee for the purpose of encouraging or discouraging membership in or participation in the activities of an employee organization. The hearing officer found no evidence of any kind of discrimination against Baroncelli.

Section 209-a.1(b) prohibits a public employer from dominating or interfering with the formation or administration of an

¹ The hearing officer also ruled that the prosecution of Baroncelli's grievances was not a protected activity under the Taylor Law. We do not reach that question in this decision. Accordingly, we do not consider any of Baroncelli's exceptions related to that part of the hearing officer's decision.

employee organization for the purpose of depriving employees of protected rights. The hearing officer found no evidence of any kind of domination or interference with the affairs of any employee organization.

Section 209-a.1(a) prohibits a public employer from interfering with, restraining or coercing a public employee in the exercise of his right of organization for the purpose of depriving him of such a right. The hearing officer found no evidence that the statement of GAB was intended to deprive Baroncelli of his organizational rights. Baroncelli contended that such improper motivation could be presumed because GAB's statement was inherently destructive of his organizational rights. The hearing officer rejected this contention, ruling that, as an adjudicating body, GAB has the authority to criticize conduct that it deems to constitute a misuse of its processes.

Baroncelli takes exception to each of the material findings of fact and conclusions of law of the hearing officer.

For the reasons stated by the hearing officer, we agree that the statement of GAB did not violate or infringe upon the Taylor ² Law.


2 Baroncelli also asserts that the hearing officer committed reversible error in that he declined to issue various subpoenas. The evidence sought through the subpoenas would, according to Baroncelli, have established the improper motivation of the members of GAB.

We determine that there was no need for the hearing officer to issue subpoenas on behalf of Baroncelli, as he is an attorney and appeared as such on his own behalf. Attorneys are authorized to issue their own subpoenas. (CPLR §2302). Indeed, Baroncelli did issue subpoenas himself to three individuals. Moreover, the record does not indicate that Baroncelli gave the hearing officer an adequate reason for requesting the subpoenas.

NOW, THEREFORE, WE AFFIRM the findings of fact and
conclusions of law of the hearing
officer, and

WE ORDER that the charge herein be, and it hereby
is, dismissed.

DATED: Albany, New York
August 20, 1980


Harold R. Newman, Chairman


Ida Klaus, Member

Member Randles did not participate.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2E-8/20/80
EDUCATIONAL SUPPORT PERSONNEL,	:	
Respondent,	:	BOARD DECISION
upon the Charge of Violation of Section 210.1	:	AND ORDER
of the Civil Service Law.	:	CASE NO. D-0194

On June 25, 1980, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Educational Support Personnel (respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the City School District of Kingston, New York on April 22, 23, 24, 25 and 28, 1980. The charge further alleged that approximately 132 employees out of a negotiating unit of 167 participated in the strike.

Respondent filed an answer but thereafter agreed to withdraw it, thus admitting all the factual allegations of the charge, upon the understanding that the charging party would recommend and this Board would accept a penalty of loss of its deduction privileges to the extent of fifty percent (50%) of the amount which would otherwise be deducted during a year.^{1/} The charging party has so recommended.

^{1/} This is intended to be the equivalent of a six-month suspension of the privileges of dues and/or agency shop fee deduction, if any, if such were withheld in equal monthly installments throughout the year. In fact, the annual dues of the respondent are not deducted in this manner.

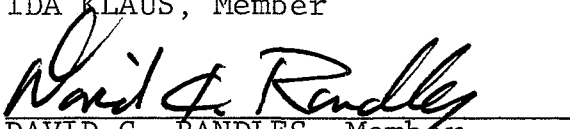
On the basis of the unanswered charge, we find that the respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one.

WE ORDER that all dues deduction privileges of the Educational Support Personnel, and agency shop fee privileges, if any, be suspended commencing on the first practicable date, and continuing for such period of time during which fifty percent (50%) of its annual dues and agency shop fees, if any, would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the City School District of Kingston, New York until the Educational Support Personnel affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
August 19, 1980


HAROLD R. NEWMAN, Chairman


IDA KLAUS, Member


DAVID C. RANGLES, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2F-8/20/80
STATE OF NEW YORK,	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
-and-	:	
	:	<u>CASE NO. U-4537</u>
FRANK S. ROBINSON, et al.,	:	
Charging Parties.	:	

JOSEPH M. BRESS, ESQ., (WILLIAM F. COLLINS,
ESQ., of Counsel), for Respondent

FRANK S. ROBINSON, pro se, (J. MICHAEL
HARRISON, EDWARD D. COHEN and ROBERT D.
REED, of Counsel)

6450 This matter comes to us on the exceptions of Frank S. Robinson, et al. (Charging Parties) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing a charge filed by them on February 13, 1980. In that charge, they allege that the State of New York (Respondent) failed to negotiate in good faith in that it unilaterally discontinued a program whereby employees in the Professional, Scientific and Technical Unit could be paid in money for accumulated vacation time. The Director ruled that Charging Parties had no standing to allege a refusal to negotiate because Respondent's duty to negotiate runs only to the Public Employees Federation (PEF), the employee organization that represents them and others in the negotiating unit.

In support of their exceptions, Charging Parties assert that the Rules of this Board give them standing to file the charge herein. They rely upon §204.1 of the Rules, which states that

an improper practice charge may be filed "by one or more public employees or by an employee organization acting in their behalf or by a public employer." The Charging Parties further argue that public policy requires this Board to permit their charge to be considered on its merits. In support of this argument, they assert that they cannot rely upon PEF to represent their interests because Respondent has coerced PEF into docility. Further, they imply a collusive arrangement between Respondent and PEF. The Director dismissed the charge herein on the basis of his determination that the charge alleged no violation of any substantive rights of Charging Parties. We affirm his decision.¹

Rule 204.1 is a procedural provision which authorizes the filing of charges to protest and vindicate the violation of substantive rights granted by the statute. It does not permit the filing of a charge which does not complain about the violation of a substantive right of the charging party. As the right to negotiate is that of the bargaining representative, not that of the individual employees on whose behalf the representative speaks, only the representative may charge the employer with a denial of that substantive right and with the violation of its corresponding obligation to negotiate with the bargaining representative.

If Charging Parties cannot have the support of PEF in advancing their interests, they must address that problem in a different manner. To the extent that Charging Parties deem PEF's

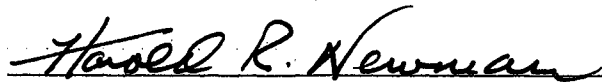
¹ In East Ramapo, 12 PERB ¶3121 (1979), we indicated our agreement with a hearing officer that a charge alleging a public employer's refusal to negotiate in good faith will be considered only if filed by a recognized or certified employee organization.

attitude to reflect poor judgment on the part of its leadership, they may seek to deal with that problem through the internal procedures of PEF. To the extent that they may believe PEF's conduct to be violative of its duty of fair representation, they may charge PEF with a breach of that duty.²

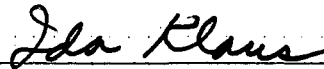
NOW, THEREFORE, for the reasons set forth herein,

WE ORDER that the charge herein be, and it hereby is, dismissed.

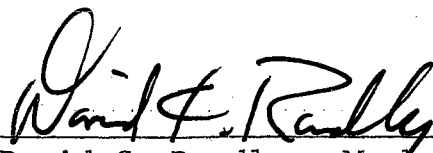
DATED: Albany, New York
August 20, 1980



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

² We note from our docket that Charging Parties have brought such a charge against PEF, Case No. U-4605.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2G-8/20/80
ELLENVILLE CENTRAL SCHOOL DISTRICT,	:	
Respondent,	:	
- and -	:	<u>BOARD DECISION AND</u>
ELLENVILLE TEACHERS ASSOCIATION,	:	<u>ORDER</u>
SCHOOL RELATED PERSONNEL,	:	
Charging Party.	:	<u>CASE NO. U-4320</u>

DRETZIN AND KAUFF, P.C. (Adam Blumenstein, Esq.
of Counsel) for Respondent

DENNIS J. CAMPAGNA, for Charging Party


The matter comes to us on the exceptions of the Ellenville Teachers Association, School Related Personnel (Association) to the dismissal of its charge against the Ellenville Central School District (District). The charge alleges that the District violated its duty to negotiate in good faith in that it changed a term and condition of employment by subcontracting bus runs for the transportation of handicapped children during the summer of 1979 without first negotiating with the Association.


The Hearing Officer found that the District did subcontract those runs for the transportation of handicapped children during the summer of 1979 without first negotiating its decision to do so but that this action did not constitute a change in the preexisting terms and conditions of employment of the bus drivers. He

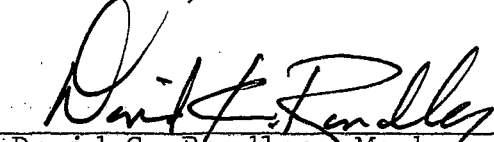
determined that there had been no established practice with respect to utilizing only unit employees to provide summer transportation to handicapped students and that the Association had accepted the District's unilateral decisions in this respect. Hence, there was no duty on the employer's part to negotiate with the Association prior to contracting out summer transportation of handicapped children because the employer's action did not change any practice.

Having reviewed the record, we conclude that it supports the Hearing Officer's findings and we affirm the Hearing Officer's determination.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

DATED: Albany, New York
August 20, 1980

6454

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF IRONDEQUOIT,

Employer,

- and -

MONROE COUNTY LOCAL 828,
CSEA, LOCAL 1000, AFSCME,

Petitioner.

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#3A-8/20/80

Case No. C-2053

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Monroe County Local 828, CSEA, Local 1000, AFSCME

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

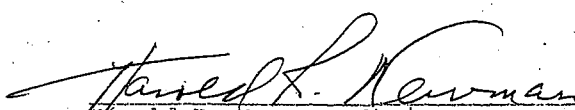
Unit: Included: All full-time blue collar employees of the Highway, Cemetery and Parks and Recreation Departments.

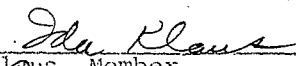
Excluded: All elected officials, Foreman of the Roads, Working Foreman, Labor Foreman II and all temporary and seasonal employees.

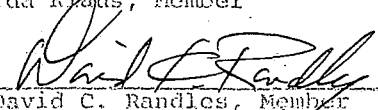
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Monroe County Local 828, CSEA, Local 1000, AFSCME

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 19th day of August, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

6455

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
RANDOLPH CENTRAL SCHOOL DISTRICT, : #3B-8/20/80
Employer, :
- and - : Case No. C-2080
RANDOLPH CENTRAL SCHOOL SERVICE :
STAFF ASSOCIATION, NYSUT/AFT, :
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Randolph Central School Service Staff Association, NYSUT/AFT

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

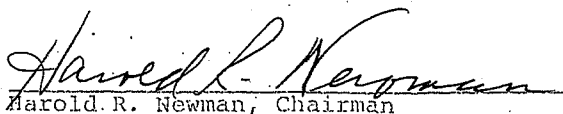
Unit: Included: All teacher aides, Account-Clerk Typist,
High School Stenographer.

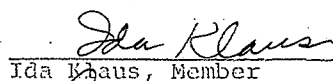
Excluded: All other employees.

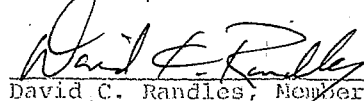
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Randolph Central School Service Staff Association, NYSUT/AFT

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of; and administration of, grievances.

Signed on the 19th day of August, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

6456

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
LIVERPOOL CENTRAL SCHOOL DISTRICT,
Employer,
- and -
UNITED LIVERPOOL FACULTY ASSOCIATION,
NYSUT, AFT, AFL-CIO,
Petitioner.

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#3C-8/20/80
Case No. C-1987

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that United Liverpool Faculty Association, NYSUT, AFT, AFL-CIO,

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

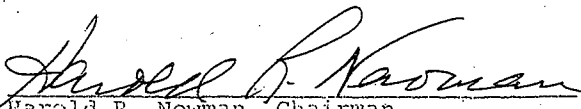
Unit: Included: All New York State certified teachers employed by the District and generally known as Classroom Teachers, ("Classroom" including regular classrooms, laboratories, gymnasiums, auditoriums, studios, libraries, special classrooms, etc.) and in addition, school psychologists and guidance counselors employed by the District ("Teachers"), school nurses, and all regular substitute teachers hired for 21 or more consecutive work days in one authorized position.

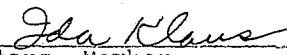
Excluded: All other personnel employed by the District.

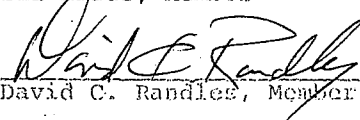
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with United Liverpool Faculty Association, NYSUT, AFT, AFL-CIO,

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 19th day of August, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randle, Member

6457

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3D-8/20/80
TUXEDO UNION FREE SCHOOL DISTRICT, :
Employer, : Case No. C-2038
- and - :
TUXEDO EMPLOYEES UNION, NYSUT, :
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Tuxedo Employees Union, NYSUT

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

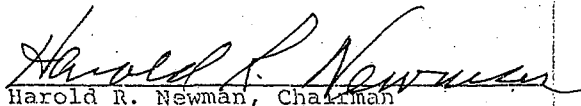
Unit: Included: Full and part-time non-instructional employees including typists, bus drivers, custodians, cafeteria manager, cafeteria assistant, teacher's aides, school monitors, school nurses, head bus drivers, bus driver-maintenance, head custodian.

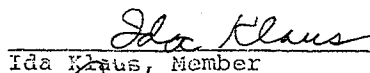
Excluded: Superintendent's secretary and principal accounting clerk.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Tuxedo Employees Union, NYSUT,

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 19th day of August, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

6458

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF HERKIMER,

#3E-8/20/80

Employer,

Case No. C-2073

- and -

TEAMSTERS LOCAL NO. 182,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA,

Petitioner.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local No. 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

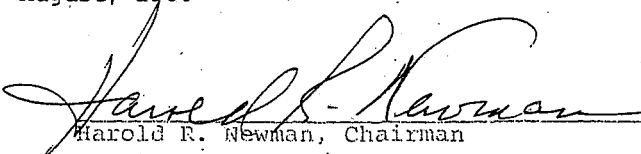
has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All employees of the Herkimer County Sheriff's Department.

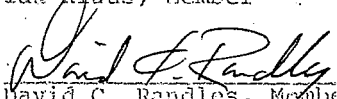
Excluded: Sheriff, Undersheriff, clerical employees and Physician.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local No. 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 19th day of August, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

6459